

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TRUSTEES OF THE 1199 SEIU HEALTH CARE
EMPLOYEES PENSION FUND,

Plaintiff,

v.

TRAYMORE CHEMISTS, INC.,

Defendant.

MEMORANDUM & ORDER
13-CV-4070 (MKB)

MARGO K. BRODIE, United States District Judge:

Plaintiff, Trustees of the 1199 SEIU Health Care Employees Pension Fund commenced this action on July 17, 2013, against Defendant Traymore Chemists, Inc., alleging violations of §§ 502(a)(3) and 515 of the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. §§ 1132(a)(3) and 1145, § 4301 of the Multiemployer Pension Plan Amendments Act, 29 U.S.C. § 1451, and § 301 of the Labor Management Relations Act of 1947 (“LMRA”), 29 U.S.C. § 185. Although properly served with copies of the summons and Complaint, (Docket Entry No. 4), Defendant failed to appear or otherwise defend against this action. On December 6, 2013, the Clerk of Court noted Defendant’s default. (Docket Entry No. 8.) Plaintiff subsequently moved for a default judgment on February 19, 2014. (Docket Entry No. 10.)

On April 8, 2014, the Court referred the motion to Magistrate Judge Cheryl L. Pollak for a report and recommendation. (Order dated April 8, 2014.) On June 5, 2014, Judge Pollak conducted an inquest. (See Docket Entry No. 24.) On June 25, 2014, Judge Pollak issued a Report & Recommendation (“R&R”) recommending that the Court grant Plaintiff’s request for a default judgment against Defendant as to liability, and that the Court award Plaintiffs a total of

\$37,567.86, comprised of: (1) \$26,688.00 in unpaid withdrawal liability, (2) \$2,837.88 in interest on the unpaid withdrawal liability to the date of the R&R, calculated at a rate of \$4.57 per day; (3) \$2,837.88 in liquidated damages, as of the date of the R&R, (4) \$4,634.10 in attorneys' fees, and (5) \$570.00 in costs, together with pre-judgment interest through the date of entry of judgment and post-judgment interest pursuant to 28 U.S.C. § 1961. (R&R 24.) No objections were filed.

A district court reviewing a magistrate judge's recommended ruling "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "Failure to object to a magistrate judge's report and recommendation within the prescribed time limit 'may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.'" *Sepe v. New York State Ins. Fund*, 466 F. App'x 49, 50 (2d Cir. 2012) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)); *see also Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) ("[A] party waives appellate review of a decision in a magistrate judge's Report and Recommendation if the party fails to file timely objections designating the particular issue.").

The Court has reviewed the unopposed R&R, and, finding no clear error, the Court adopts Judge Pollak's R&R in its entirety pursuant to 28 U.S.C. § 636(b)(1). Plaintiff's motion for default judgment is granted. The Clerk of Court is directed to enter judgment in favor of Plaintiff against Defendant in the amount of \$37,567.86 together with interest on withdrawal

liability, calculated at the rate of \$4.57 per day between the date of the R&R, June 25, 2014, and the date of entry of judgment, and post-judgment interest pursuant to 28 U.S.C. § 1961.

SO ORDERED:

s/MKB
MARGO K. BRODIE
United States District Judge

Dated: August 25, 2014
Brooklyn, New York